(3)

Supreme Court, U.S.
FILED
MAR 24 1999
CLERK

No. 98-1250

In The
Supreme Court of the United States

October Term, 1998

Ulpiano Unanue-Casal, a/k/a/ Charles Unanue
Petitioner,

v.

Goya Foods, Inc., Joseph A. Unanue,
Frank Unanue, *et al*,
Respondents

On Petition for a Writ of Certiorari to the Supreme Court of the State of New Jersey

---

PETITIONER'S REPLY BRIEF

Charles Unanue, Pro-se
625 Park Avenue
New York, NY 10021
(917) 225-0008

March 23, 1999

21pp

TABLE OF CONTENTS

Page

Table of Contents..... i

Table of Authorities..... iii

Reply Brief..... 1

Preamble..... 1

I. This Court Has Jurisdiction To Review The Abstention And Other Decisions Below..... 3

II. Dismissal of the Bankruptcy Case Vacated The Judgments Against The Bankruptcy Estate..... 3

III. The Lies Made To The Courts Obstruct Justice And Compound The Felonies..... 5

The theft of Goya shares:..... 6

IV. Respondents Misinform This Court That The Goya Companies Are All Subsidiaries Of Goya, *Which Is Not True*, To Hide The Fact That New Jersey Did Not Have Jurisdiction..... 7

TABLE OF CONTENTS (CONT'D)

Page

V. The Decisions Below Will Permit The Continuing Embezzlement Of Partnerships, As Well As Lawsuits In State Courts Against Debtors That Are Under The Protection Of Bankruptcy Courts..... 9

Conclusion..... 10

TABLE OF AUTHORITIES

Page

Cases:

Acton Co. Inc. of Mass. v. Bachman Foods, Inc. 668 F.2d 76, 81 (1st Cir. 1982)..... 8

Statutes:

11 U.S.C. § 349(b)..... 3

28 U.S.C. § 1257(a)..... 3

31 LPRA § 9..... 7

31 LPRA § 10..... 7

31 LPRA § 24..... 7

31 LPRA § 221..... 7

31 LPRA § 441..... 7

31 LPRA § 2361..... 7, 8, 9

31 LPRA § 2362..... 7

31 LPRA § 2367..... 7, 8, 9

31 LPRA § 2368..... 7

31 LPRA § 2369..... 8

31 LPRA § 2370..... 8

TABLE OF AUTHORITIES (CONT'D)

Page

31 LPRA § 3421..... 8

31 LPRA § 3432..... 8

31 LPRA § 3551..... 6, 7

31 LPRA § 3621..... 7, 8, 9

31 LPRA § 3622..... 7

31 LPRA § 3623..... 7

31 LPRA § 3624..... 6, 7

31 LPRA § 3641..... 7

31 LPRA § 3672..... 6, 7

31 LPRA § 3673..... 7

Other Authorities:

Civil Code of Puerto Rico (1902) § 1282..... 6

Civil Code of Spain (1888) Art. 1310, 1315... 6

H. Rept. No. 95-595..... 3

H.R. 8200, 95th. Cong.
1st. Sess. (1977) pp 337, 338..... 3

Respondents' Brief in Opposition does not respond to the important issues of federal and constitutional law in Petitioner's brief. Those not responded to must be considered as admissions. Respondents continue the smear campaign with their customary profusion of lies. Supreme Court Rule 15.2 obliges me to point out perceived misstatements which would consume most of the 10 pages allowed for the reply brief. The plethora of perceived misstatements are, therefore, reported in the appendix (1a-6a).[1]

Evidence is available, but not included, that support my counter-statements. I certify that everything I say herein, is true, and agree that if any statement of mine is found to be willfully false, I should be punished.

In fairness, Respondents and their counsel should also be punished for the intent to obstruct justice with the intentional lies and misstatements made to this High Court, and to the courts below.

PREAMBLE

Notwithstanding that the bankruptcy court held that I was not guilty of any wrongdoing, Respondents, rather than dispute the issues in my brief, repeat the previously rebutted calumny and accusations made to appellate courts below, without evidence, and relying on the intensive promotion, publicity and media coverage such as that given to the hiring, by my brother Frank Unanue ("Frank"), of the Honorable Judge of the 1st. Circuit, who became the Chief Judge and the representative of that court of appeals, in Puerto Rico, to sail his Cuter Queche, *representing Goya and Puerto Rico,* round trip across the Atlantic, *as the Danza GOYA,* in the Christopher Columbus Regatta and to

---

[1] Reference to the attached appendix will be noted as (__a), to the Lodging Appendix as (__b), to the Petition for the Bankruptcy Estate as (BE___) and to the Respondents Brief in Opposition as (RB___).

thereafter host festivities in San Juan, New York and Boston. (1b-6b). Meanwhile, in New Jersey, my brother "Joseph" made self-serving political contributions exceeding $20 Million, The New Jersey press reported: "Joseph Unanue, worth $475 million by some accounts, was co-chairman of the fund-raising committee for Governor Whitman's reelection campaign last year." (7b).

Back in Puerto Rico, Frank, using the Goya Companies based in Puerto Rico as *alter egos* and some of the tens of millions of dollars of fully tax-exempt dividends, *including my 25% share*, made further undetermined contributions to the electoral campaign of the governor of Puerto Rico, as he had for the previous governor from the other party, and appears frequently with him in the local press and media. On information and belief, the last electoral campaign is being investigated, by the Attorney General, for the wrongful use of contributions made to combat Aids.

Respondents engaged the largest legal firm in New York, the largest in Puerto Rico and one of the largest in New Jersey, to defend their larceny, by submitting biased proposed orders and making statements with slander and lies that busy district and appellate courts found credible due to persistent repetition by such mighty "officers of the court" and overlooked that the proposed orders and suggested findings are without evidence or substance.

I. THIS COURT HAS JURISDICTION TO REVIEW THE ABSTENTION AND OTHER DECISIONS BELOW.

As pointed out by Respondents, it is pursuant to 28 U.S.C.§ 1257(a) that this Court has jurisdiction.

II. DISMISSAL OF THE BANKRUPTCY CASE VACATED THE JUDGMENTS AGAINST THE BANKRUPTCY ESTATE.

I can agree with Respondents' statement that Petition to

review the issue of the judgment against the bankruptcy estate is moot, ***only if*** the dismissal of the bankruptcy case vacated the judgment against the bankruptcy estate. It is well settled that, upon dismissal, without prejudice, property rights are restored to the position they were in prior to the bankruptcy petition, without anything that occurred during the bankruptcy, reverting, to the debtor, unless ordered that it revert, by the bankruptcy court.

The Legislative History of 11 U.S.C.§ 349(b), Effect of dismissal, states in relevant part:

> "The basic purpose of the subsection is to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case. This does not necessarily encompass undoing sales of property from the estate to a good faith purchaser. Where there is a question over the scope of the subsection, the court will make the appropriate orders to protect the rights acquired in reliance on the bankruptcy case." (H.Rept.No.95-595 to accompany H.R. 8200 95th Cong. 1st.Sess. (1977) pp. 337, 338)

Moreover, Respondents' counsel, Michael R. Griffinger, Esq. admitted and assured the New Jersey Chancery Court:

> "As your Honor knows, under Section 362 of the Bankruptcy Code is (sic) the lifting of the stay permits us to go up to and including the entry of judgment and any appeals, but as far as collection we must go back to the Bankruptcy court and say to the Bankruptcy Court here is our claim, we wish to realize it in this Court, and that is why we framed it [the proposed order for an additional judgment against the debtor, individually] the way we

did." (BE 205a).

Yet, as obviously had been planned, the judgment against the bankruptcy estate was intentionally not brought to the Bankruptcy Court as Mr. Griffinger had informed the New Jersey court would be required for its collection. As a result, the dismissal of the bankruptcy case for the cause that there were no creditors before the bankruptcy court, dissolved the bankruptcy estate, without any provision whatsoever for the survival of the judgment against the bankruptcy estate, which was the only party defendant.[2]

Respondents' proffer that the judgment against the bankruptcy estate reverted to me overlooks all of the following facts:

1. That on December 19, 1991, I was substituted as the only party defendant and the only party in interest in the New Jersey proceeding by the trustee of my Chapter 7 bankruptcy estate (8b-10b). I have, since then, not been a party or party in interest in the New Jersey proceeding. My presence in the Chancery Court, after that, was not by invitation, as alleged, but in compliance with an order of the court, to be present. At every appearance I made it clear that I was not a party and was never told otherwise. After September 5, 1990, I have not been represented by Mr. Brody in the proceeding. Mr. Brody, represented the bankruptcy trustee, with whom I had a conflict of interest, again, after February 23, 1995, in the Appellate Division,

---

[2] In the belief that they would have difficulty in collecting the judgment against the bankruptcy estate in the bankruptcy court, Respondents, on February 23, 1995, without me or the trustee of the bankruptcy estate being present, surprised the New Jersey court by submitting a proposed order for dual final judgments of $6.9 Million, *one against me, who was not a party and was in Chapter 7 bankruptcy with no assets or interests* and the other against the bankruptcy estate, which Respondents obtained *the same day*, without opposition.

with his fees being paid by my wife. *After* the dismissal of my bankruptcy case, on September 12, 1995, he continued the appeal of said judgment, for which he continues to be paid by my wife.[3] *My wife has a vested interest because Goya has sued to collect the judgments, from her.*

2. That it is well settled law that an individual in Chapter 7 bankruptcy cannot be sued for pre-petition debts and obligations, which are under the exclusive jurisdiction of the Bankruptcy Court, *nor given a judgment for those debts.* (No case was cited, or could be found, in which a judgment entered against a debtor, or his estate, in Chapter 7 bankruptcy, for pre-petition debts, reverted to the debtor upon a dismissal, without prejudice, of the bankruptcy case, without the bankruptcy court ordering that it revert.)

3. That no case could be found, other than the instant case below, in which an individual that has not been made a party, nor noticed as party in interest by the filing of a complaint, has been issued a judgment against him.

III. THE LIES MADE TO THE COURTS OBSTRUCT JUSTICE AND COMPOUND THE FELONIES.

It has not and cannot be disputed that on November 13, 1921, the day of the marriage, in San Lorenzo, Puerto

---

[3] Mr. Jan Brody represented me until September 5, 1990, when the bankruptcy stay was imposed and represented the bankruptcy trustee Mr. Quiros-Lopez, from approximately February 15, 1991, when the bankruptcy stay was modified to allow only the completion of the domicile hearing, until December 4, 1991, when that interlocutory decision was rendered. I had a conflict of interest with the trustee, because, jointly with Goya, he sued me in the bankruptcy court. I had to hire lawyers to represent me there. Mr. Brody then represented the trustee for the appeal to the Appellate Division, of the judgment against the bankruptcy estate, *after the final judgments of February 23, 1995. I was represented, in the Appellate Division, by McElroy, Deutsch and Mulvaney until judgment was rendered and have been pro se* thereafter.

Rico, between the then citizens of Spain, Prudencio Unanue ("Prudencio") and Carolina Casal ("Carolina"), a legal partnership of gains and acquest was created pursuant to the Civil Code of Porto Rico, 1902, §1282 (currently 31 LPRA § 3551) and Article 1310 of the Civil Code of Spain (1888) ("Conjugal Partnership"), which partnership would be an entity separate and distinct from the spouses, to be administered by the husband, Prudencio, governed by the partnership laws in the Civil Code of Puerto Rico, where it was created and would continue, until the dissolution of the marriage, irrespective of any changes in the residence, domicile or nationality of the spouses (31 LPRA § 3551).[4]

The theft of the Goya shares:

Prudencio left Carolina at their residence in Puerto Rico and travelled to the Goya offices in Brooklyn, New York, on November 16, 1970. There he created a New Jersey *inter vivos* trust that had been prepared by the legal firm of Skadden, Arps, Slate, Meagher & Flom ("Skadden") and *illegally* (in violation of 31 LPRA § 3624, § 3672) *deposited into it the majority voting shares of Goya, which were the exclusive property of the Conjugal Partnership, making himself, Joseph and Frank the trustees. At the same time Prudencio signed an illicit new will, which had*

---

[4] Conjugal Partnerships, are created on the day of the marriage in over 90% of the marriages taking place in Civil Law jurisdictions. Civil Law exists in virtually all of the nations in South and Central America, the Caribbean, most of Europe and many other nations, with exceptions such as the United States and the United Kingdom, which are governed by Common Law.

been prepared by and was witnessed by Skadden, [5] *all in violation 31 LPRA §§ 9, 10, 221, 441, 2361, 2362, 2367, 2368, 2369, 2370, 3551, 3621, 3622, 3623, 3624, 3641, 3672 and 3673, and made arrangements, in his will, for the theft of all the property of the Conjugal Partnership.*

IV. RESPONDENTS MISINFORM THIS COURT THAT THE GOYA COMPANIES ARE ALL SUBSIDIARIES OF GOYA, *WHICH IS NOT TRUE,* TO HIDE THE FACT THAT NEW JERSEY DID NOT HAVE JURISDICTION.

The Goya Companies, *were 11 independent and self-governing,* privately held companies.

As required by the "estate plan" devised by Skadden for its clients Joseph, Frank and their *alter ego*, Goya, the 1972 Agreement for the sale of my shares of stock to the 11 Goya Companies, and their subsequent public sale for my benefit, was defaulted. During the rancorous litigation that followed, I was compelled to give up, *in futuro,* the inheritance from my father, in the 1974 Amendment, which was signed, notarized and performed in Puerto Rico and was therefore governed by its laws.[6] *Significantly, neither of my parents were parties or signatories.*

The courts below, without the participation of 11 of the 12 indispensable contracting parties, held that the 1974 Amendment, which had been executed and performed in Puerto Rico, with illicit consideration and was null *ab initio*

---

[5] Other than learning, some years later, that some of the stock of Goya had been placed in a trust, Petitioner had no knowledge that the property of the Conjugal Partnership had been disposed of (stolen) until 1987, bringing about the subsequent 12 years of litigation.

[6] The 1974 Amendment had a New York State "choice of law clause" intended to allow the violation of the laws of Puerto Rico, which had all the principal contacts with the 1974 Amendment. Because the consideration was illicit in Puerto Rico it was null *ab initio.*

(11 LPRA § 3432), was valid and enforceable. Then, based solely on an illegal penalty clause that the 1974 Amendment contained in Section 8.01 (13b), the Chancery Court rendered the dual $6.9 Million judgments, against the bankruptcy estate and against me, individually.

The judgments were issued notwithstanding; 1. That penalty clause on which they were based was illegal under the laws of Puerto Rico, New York and New Jersey; 2. That the 1974 Amendment was "born dead" and never existed because of a prohibited renunciation of a future inheritance (31 LPRA §3421), in Section 6.03 (14b-16b), which was the principal objective of the 1974 Amendment; 3. The "reverse savings clause" contained in Section 7.03(b) (11b, 12b), requiring the cancellation of the 1974 Amendment if it could not be substantially enforced; 4. That the ruling was made, summarily, without discovery and without 11 of the 12 indispensable contracting parties. See: *Acton Co. Inc. of Mass. v. Bachman Foods, Inc.*, 668 F.2d 76, 81 (1st Cir. 1982); 5. That having been born in Puerto Rico I was an "heir by force of law" pursuant to 31 LPRA §§ 2361, 2362) and, moreover, as a citizen of Puerto Rico, I could not renounce a future inheritance (31 LPRA §§ 9, 3421), and; 6. That the Penalty Clause in Section 8.01 (13b), which was the sole basis for the $6.9 million judgments, was being used to enforce compliance with the prohibited renunciation of a future inheritance.

It was not until December, 1986, 2 years after the death of my mother, who was the 1/2 owner of the Conjugal Partnership and who had promised me that she would never leave me out of her will, and never did, that I discovered that the waiver of the future inheritance from my father was a nullity ab initio, pursuant to 31 LPRA §§ 2361, 2367, 2369, 2370 and, moreover, that the renunciation or waiver *in futuro* of an inheritance was specifically prohibited by 31 LPRA § 3421. In February, 1987, I learned that as

executors of our parents' wills, my brothers Joseph and Frank had taken all of the property of the Conjugal Partnership, including the 1/2 that became the exclusive property of my mother, upon the death of Prudencio (31 LPRA § 3621), for themselves, leaving Carolina with a total of only $30 *THOUSAND*. The current real worth of her estate, of which I have received no part of the 25%, to which I have an inalienable legal and testamentary right, exceeds $200 *MILLION*.

V. THE DECISIONS BELOW WILL PERMIT THE CONTINUING EMBEZZLEMENT OF PARTNERSHIPS AS WELL AS LAWSUITS IN STATE COURTS AGAINST DEBTORS THAT ARE UNDER THE PROTECTION OF BANKRUPTCY COURTS.

Respondents state on page 14, that the circumstances of this case are unique and that there is "no likelihood that it will ever recur". ***The opposite is true.***

Respondents do not state how or why another spouse that is the administrator of a Conjugal Partnership or the managing partner of a partnership of gains, could not, after establishing a real or nominal residence in New Jersey, create a New Jersey trust, deposit into it the nominally held partnership property and use or dispose of it, *as Prudencio did*, to defraud his wife, the 1/2 owner of their Conjugal Partnership, his own and his wife's forced heirs [7] and her testamentary heirs, as well as the taxing authorities, *as Prudencio did* with the collaboration of Skadden, his sons

---

[7] Pursuant to 31 LPRA § 2361, "forced heirship" is that part of the testator's property which he cannot dispose of because the law has reserved it for specified heirs, called on that account, *heirs by force of law. Petitioner, who was born in Puerto Rico was unquestionably an heir by force of law and a citizen of Puerto Rico governed by its laws.*

Joseph and Frank and the tacit approval of the New Jersey courts, ***after moving Goya from New York to New Jersey.***

Similar or identical thefts of partnership property, will be much easier because of the precedent set by this case. By allowing the precedent to stand, the United States could be held responsible for the future thefts of out-of-state or foreign partnership property, until a victim or victims with sufficient resources, tenacity and ability, *or a class action*, finally succeeds in having the precedent, that New Jersey need not give Full Faith and Credit to the laws of Puerto Rico, or to the laws of those nations with which the United States has treaties, *is overturned.*

Respondents have used the assets that they stole to persuade the New Jersey courts to wrongly deny Full Faith and Credit to the Civil Code of the Commonwealth of Puerto Rico which the Congress of the United States made effective for the government of Puerto Rico and its residents, on July 1, 1902.

A further precedent with the potential to jeopardize many, is the decision below that a judgment can be rendered by a state court, against an individual that is under the protection of the bankruptcy court, for pre-petition debts.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court issue a writ of certiorari to review the decision of the New Jersey Supreme Court, and the courts below.

Respectfully submitted,

Charles Unanue, *Pro se*
625 Park Avenue
New York, NY 10021
(917) 225-0008

March 23, 1999